

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.97 of 2007

CNR-ODHC010185862007

(In the matter of an application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973)

Sambhunath Jena ***Petitioner***

-Versus-

Laxmidhar Parida ***Opp. Party***

For the Petitioner : Mr. Debasish Samal, Advocate

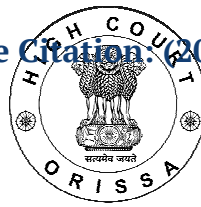
For the Opp. Party : None

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 21.05.2026 :Date of Judgment: 30.07.2026

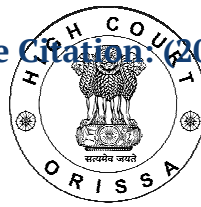
S.S. Mishra, J. The present criminal revision is arising out of the judgment and order dated 16.12.2006 passed by the learned Adhoc Additional Sessions Judge, Fast Track Court No.I, Cuttack in Criminal Appeal No. 31 of 2005, whereby the judgment of conviction and order of sentence passed by the learned J.M.F.C., Cuttack on 06.05.2004/ 18.04.2005 in 1.C.C. Case No. 15 of 2003 (Trial No.1190 of 2003) sentencing the petitioner to



undergo S.I. for three months and to pay compensation of Rs.40,000/- has been upheld.

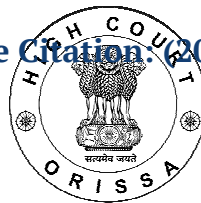
2. Heard Mr. Debasish Samal, learned counsel for the petitioner. None appeared for the complainant.

3. The case of the complainant is that he was running a proprietorship firm named and style as 'M/s Devi Daya Enterprises' at Balikuda and was dealing with raw materials like cattle feeds and chicks. The accused is a private limited company having its head office at Ganeswarpur in Balasore. The petitioner is the Managing Director of the said company. The accused company deals with cattle feeds and had business transaction with the complainant firm. The accused company used to purchase products from the complainant on credit and on part payment basis. In course of business transaction, an amount of Rs.1,42,665/- was outstanding against the accused company by 06.12.2002. After several approaches the accused issued two cheques bearing no.455059 dated 18.11.2002 and



455060 dated 25.11.2002 each for Rs.50,000/- drawn on S.B.I., Balasore Industrial Estate, Balasore towards part payment of his dues. The complainant deposited the said cheques on 25.11.2002 with its banker U.T.I. Bank Ltd., Cuttack for clearance, which were dishonoured due to insufficient funds in the account of the accused, as the account was closed. The cheques issued by the accused being dishonoured, the complainant issued registered notice to the accused demanding payment of the cheque amount. In spite of receiving the notice, the accused failed to make the payment within the statutory period of 15 days, for which the complainant filed the complaint case under Section 138 of the N.I. Act.

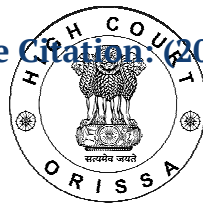
4. In order to prove the charge, the complainant examined himself as P.W.1, whereas P.W.2 was his Managing Director and exhibited as many as fifteen documents. The plea of the accused was complete denial of the facts alleged against him and he has also examined none on his behalf.



5. The learned trial Court, by analyzing the evidence available on record, found the petitioner guilty of the offence punishable under Section 138 of the N.I. Act and accordingly, sentenced him. On analysis of the evidence, the learned trial Court arrived at the following conclusion:

“7. The complainant has stated that he presented the cheques marked as exts.1 and 2 at his banker, that is U.T.I. Bank Ltd., Cuttack branch which was dishonoured due to insufficiency of funds in the account of the accused. He has submitted ext.3 which is intimation from the S.B.I. Balasore Industrial Estate branch, on which the cheques marked exts. 1 and 2 were drawn on. Ext.3 show that the cheque marked as ext.1 and 2 were dishonoured due to insufficiency of funds in the account of the accused and ext.4 submitted by the complainant is the intimation letter from his banker U.T.I. Bank Ltd., Cuttack intimating him regarding the dishonor of the cheques. Ext.3 and 4 clearly reveal that accused had an account in S.B.I. at Balasore Industrial Estate, the cheques were presented within time for clearance but the account being closed the cheques marked Exts.1 and 2 were dishonoured on the ground of insufficiency of funds in the account of accused and 2nd point for determination stands prove.

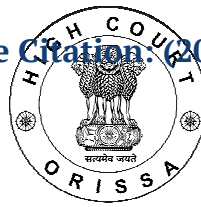
8. It is stated by the complainant that after the dishonor of the cheques he had issued registered notice through his lawyer to the accused calling upon him to pay the value of the dishonor cheques. He has filed to that effect Ext.5 which is said to be the office copy of the said demand notice sent to the accused. Ext.6 is a postal registration receipt and Ext.7 is acknowledgement card showing that the letter was received by the accused on 19.12.2002. The intimation slip marked ext.4 shows that the intimation was given to the complainant on 13.12.2002 by his banker regarding the dishonor of the cheques and as per Exts.5 and 6 a demand notice was sent on 18.12.2002 which shows that such notice was sent to the accused within the time. Further as seen from



ext.7 that notice was received by the accused on 19.12.2002. But as no payment was made within 15 days for which the present complainant was filed on 29.01.2003 well within the statutory period. Nothing has been put forth by the defence disputing the above facts. Hence, the 3rd point for determination stands prove.”

6. Being aggrieved by the findings of the learned trial Court, the petitioner filed Criminal Appeal No.31 of 2005 before the Court of the learned Adhoc Additional Sessions Judge, Fast Track Court No.I, Cuttack. It appears from the record that during pendency of the said proceeding, the petitioner has already paid the awarded compensation amount of Rs.40,000/- to the complainant. The Appellate Court in paragraph-3 of its judgment has recorded that during pendency of the appeal, the appellant has paid the compensation amount as directed by the learned Court below and the same has been duly acknowledged by the respondent by filing a memo to that effect.

7. It is contended by Mr. Debasish Samal, learned counsel appearing for the petitioner that after noticing and recording the payment of compensation amount by the petitioner to the respondent, the Appellate Court

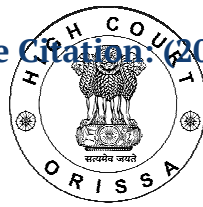


should have moulded the sentence part. Contrary to the same, the learned Appellate Court recorded as under:

“5. So far the contention of the learned counsel that the appellant has paid the compensation as directed by the court he be exonerated from suffering the substantive sentence I find no reason to succumbed to such contention. First of all it is because the compensation money does not meet the dishonoured cheques amount and further the object of the enactment would also be frustrated as it is one to curb the practice of indiscriminate issuance of cheque, without making necessary arrangements. It is also for the reason that in case the accused is let off with only a compensation it would virtually amounts to putting a premium on his misdeed.”

8. Aggrieved by the aforementioned judgment of the learned Appellate Court, the present Criminal Revision has been filed. Mr. Samal, learned counsel for the petitioner, without entering into the merits of the case submitted that since the petitioner has already paid the compensation amount and the complainant/respondent has been abstaining from this proceeding throughout, the Criminal Revision may be put to rest by extending the benefit of Probation of Offenders Act to the petitioner.

9. It appears from the record that the respondent/complainant has not been appearing before this Court right from the beginning for obvious reasons that he has

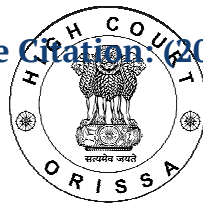


already received the compensation amount. The complaint case was initiated way back in the year 2003 and the respondent was convicted by the learned trial Court in the year 2004. The learned Appellate Court disposed of the appeal in the year 2006. Thereafter, from 2007, this Criminal Revision has been pending.

10. The petitioner was 52 years old in the year 2003. At present, the petitioner would be about 75 years old. Keeping in view the long pendency of the Criminal Revision, age of the petitioner and the fact that the petitioner has already paid the compensation amount, I am inclined to accede to the prayer made by Mr. Samal, learned counsel for the petitioner.

11. Accordingly, while maintaining the conviction recorded by the learned Courts below, the petitioner is granted the benefit of Probation of Offenders Act.

12. Regard being had to the societal position of the petitioner, clean antecedent and the fact that the incident had taken place in the year 2003, I am of the



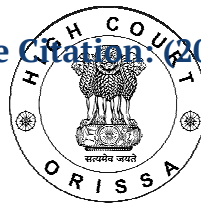
considered view that the petitioner is entitled to the benefit of the Probation of Offenders Act r/w Section 360 of Cr.P.C. Additionally, the case of the petitioner is also covered by ratio of the judgment of this Court in the case of ***Pathani Parida & another vs. Abhaya Kumar Jagdevmohapatra***¹ and ***Dhani @ Dhaneswar Sahu vs. State of Orissa***².

13. The ratio of the aforesaid decisions, emphasizes the reformatory approach of criminal jurisprudence in cases involving personal disputes and absence of criminal antecedents, is fully applicable to the facts and circumstances of the present case.

14. In such view of the matter, the present Criminal Revision in so far as the conviction is concerned is turned down. But instead of sentencing the petitioner to suffer imprisonment, this Court directs the petitioner to be released under Section 4 of the Probation of Offenders

¹ 2012 (Supp-II) OLR 469

² 2007 (Supp.II) OLR 250



Act for a period of two months on his executing bond of Rs.5,000/- (Rupees Five Thousand) within two months with one surety for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the petitioner shall keep peace and good behavior and he shall remain under the supervision of the concerned Probation Officer during the aforementioned period of two months.

15. Accordingly, the CRLREV is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of July, 2026/ Subhasis Mohanty